

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

ROBERT T. BROCKMAN,

Defendant.

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Cr. No. 4:21cr 009 GCH

PARTIES' AGREED MOTION FOR A STATUS CONFERENCE

The United States and Defendant, by and through their respective counsel, respectfully request a status conference with the Court in this case to address: 1) the Supplemental Unopposed Motion to Modify Competency Hearing Scheduling Order, filed on April 19, 2021, *Dkt. No. 49* (“Proposed Revised Scheduling Order”) (which is intended by the parties to supersede the unsigned Proposed Revised Scheduling Order submitted on March 31, 2021, *Dkt. No. 48*); 2) the Agreed Motion for Protective Order, *Dkt. No. 47* (“Proposed Protective Order”); and 3) the government’s Motion for Discovery Under Rule 17(c) and 45 CFR 14.512(e)(1)(i), *Dkt. No. 26* (Government’s Discovery Motion). The parties have been working collaboratively to allow Defendant to be examined by the government’s experts, and by agreement of the parties, those examinations are now expected to begin on May 5. All three pending motions relate to these examinations, and preparation for the Competency Hearing.

I. PROCEDURAL POSTURE

On December 8, 2020, Defendant filed a motion for a competency hearing pursuant to 18 U.S.C. § 4241. *See* 20-cr-371 (N.D. Cal.) (“NDCA”) *Dkt. No. 64* (the “Motion”). On December 15, 2020, the government filed its response to Defendant’s Motion (the “Response”) agreeing

that a competency hearing is appropriate in this case. *See NDCA Dkt. No. 69.* On January 4, 2021, this case was transferred from the Northern District of California to this Court. *See NDCA Dkt. No. 76.* On February 1, 2021, this Court, on an Agreed Motion by the parties, entered a Scheduling Order setting a Competency Hearing in this case for June 29, 2021. *Dkt. No. 36.*

On January 26, 2021, the government filed a motion under Fed. R. Crim. P. 17(c) and 45 CFR § 164.512(e)(1)(i) for an Order requiring Defendant's medical doctors, and other parties, to provide the government with records within 30 days of service of a subpoena. *Dkt No. 26.* On February 10, 2021, Defendant filed his partial opposition to the government's Motion. *Dkt. No. 41.* On February 11, 2021, the government filed its Reply to Defendant's Response. *Dkt. No. 43.*

On February 17, 2021, the government filed its Notice of Experts for purposes of the Competency Hearing. *Dkt. No. 44.* On February 22, 2021, Defendant filed a Response to the government's Notice of Expert Witnesses, together with a Motion for Protective Order. *Dkt. No 45.* On March 11, 2021, after the parties discussed their respective positions, the parties filed an Agreed Motion for Protective Order, outlining proposed protocols agreed to by the parties under which the government's experts are to interview and examine Defendant. *Dkt. No. 47.*

On March 12, 2021, Defendant underwent a PET scan which was requested by one of the government's experts. On the evening of Sunday, March 14, 2021, before the other tests and examinations agreed upon by the parties could be completed, Defendant was brought to the emergency room at Houston Methodist Hospital. He was subsequently admitted to the hospital, and released on Friday, March 19, 2021. Following discussions between the government and Defendant's counsel, the parties agreed that further tests and examinations by the government's experts should be delayed. Accordingly, on March 31, 2021, the parties filed an Agreed Motion requesting a revision to the Scheduling Order for the Competency Hearing, together with a proposed revised Order. *Dkt. No. 48.*

Subsequent to the March 31 filing, the parties met and conferred and reached an agreement to propose further modification of the scheduling order to allow for additional time between the submission of the government's expert reports and the submission of any expert reports offered by the defense, as well as additional time between the

submission of any defense expert reports, and the competency hearing date. As a result of these discussions, on April 19, 2021, Defendant filed the unopposed Proposed Revised Scheduling Order. *Dkt. No. 49.*

II. STATUS

The initial Scheduling Order entered by the Court required the examinations and interviews by the government's expert witnesses to be completed by April 16, 2021, and the expert witnesses' reports provided to Defendant by May 7, 2021. The Competency Hearing is currently scheduled for June 29, 2021. The parties agree that intervening events have made this schedule untenable. The parties have agreed that before a competency hearing can be held: 1) the government's experts are to examine and interview Defendant (by agreement currently scheduled for May 5th, 18th, 19th and 20th); 2) the parties agree that the protocols and procedures for the examination and interview of Defendant by the government's experts need to be in place; 3) the parties need to complete discovery; and 4) the government's experts, and any expert that Defendant may seek to call at the Competency Hearing, need to prepare, and exchange their reports, including all underlying testing data.

Accordingly, the parties agree that it is in the interests of both parties to resolve these pending matters before the government's experts are scheduled to begin their examinations of Defendant on May 5. Namely:

- 1) the Proposed Revised Scheduling Order, *Dkt. No. 49*;
- 2) the Parties' Proposed Protective Order, *Dkt. No. 47*; and
- 3) the government's Discovery Motion, *Dkt No. 26*.

Respectfully submitted this 20th day of April 2021,

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s/ Corey J. Smith
COREY J. SMITH
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Certificate of Conference and Service

I the undersigned do hereby certify that on April 13, 2021, and subsequently, government's counsel conferred with Defendant's counsel who confirmed that they were unopposed to this Motion. On the 20th day of April 2021 I electronically filed the foregoing with the Clerk of Court using the ECF electronic filing system, which will send notice of electronic filing to Defendant's counsel of record.

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